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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,863	02/09/2004	Tsuide Yanagihara	FY.17518US1C	9501
20995	7590	12/12/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			BASINGER, SHERMAN D	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3617	

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/774,863	Applicant(s) YANAGIHARA, TSUIDE	
	Examiner Sherman D. Basinger	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 10/080,371.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/9/04</u> . | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

1. The disclosure is objected to because of the following informalities: in paragraph [0035] "(FIGURE 8)" should be changed to -(FIGURE 7A)-; and in paragraph [0050], line 10, "a pulley 120" should be corrected to -in pulley 120-.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bernier et al 059.

Bernier et al discloses a jet propelled watercraft 10 comprising  
an engine 18 having at least one throttle valve 146, the throttle valve 146 being  
movable between an idle position and a fully open position,  
a throttle operator 154 remotely positioned relative to the engine and coupled to  
the throttle valve, the throttle operator 154 being movable between first and second  
positions whereby the throttle operator causes the throttle valve to move between  
the idle and fully open positions, respectively; and

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an engine control system comprising a first sensor 84 configured to detect an operating state of the watercraft or the engine, a second sensor 70 configured to detect a position of the throttle operator, a throttle valve control mechanism 74 including an actuator cooperating with the throttle valve under at least one operating state of the watercraft or the engine, and a controller 72 communicating with the first and second sensors and with the throttle valve control mechanism, the controller 72 being configured to activate the throttle valve control mechanism once the operating state of the watercraft or engine is greater than a predetermined state and to leave active the throttle valve control mechanism at least when the throttle operator quickly moves to the first position so as to maintain the throttle valve between the idle and fully open positions.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Rheault et al 833.

Rheault et al discloses a jet propelled watercraft 2 comprising an engine 6 having at least one throttle valve, the throttle valve being movable between an idle position and a fully open position, a throttle operator 24 remotely positioned relative to the engine and coupled to the throttle valve, the throttle operator 24 being movable between first and second positions whereby the throttle operator causes the throttle valve to move between the idle and fully open positions, respectively; and

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an engine control system comprising a first sensor 310, 320 configured to detect an operating state of the watercraft or the engine, a second sensor 330 configured to detect

a position of the throttle operator, a throttle valve control mechanism including an actuator cooperating with the throttle valve under at least one operating state of the watercraft or the engine, and a controller 300 communicating with the first and second sensors and with the throttle valve control mechanism, the controller 300 being configured to activate the throttle valve control mechanism once the operating state of the watercraft or engine is greater than a predetermined state and to leave active the throttle valve control mechanism at least when the throttle operator quickly moves to the first position so as to maintain the throttle valve between the idle and fully open positions (see column 14, lines 35-37, column 14, lines 55-end, column 15, lines 9 and 10, column 15, lines 28-31 and column 15, line 50).

5. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Iida et al 777. Iida et al discloses a jet propelled watercraft 30 comprising an engine 32 having at least one throttle valve 54, the throttle valve 54 being movable between an idle position and a fully open position, a throttle operator 132 remotely positioned relative to the engine and coupled to the throttle valve, the throttle operator 132 being movable between first and second positions whereby the throttle operator causes the throttle valve to move between the idle and fully open positions, respectively; and

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an engine control system comprising a first sensor 88 configured to detect an operating state of the watercraft or the engine, a second sensor 90 configured to detect a position of the throttle operator, a throttle valve control mechanism 132a including an actuator 142 cooperating with the throttle valve under at least one operating state of the watercraft or the engine, and a controller 86 communicating with the first and second sensors and with the throttle valve control mechanism, the controller 86 being configured to activate the throttle valve control mechanism once the operating state of the watercraft or engine is greater than a predetermined state and to leave active the throttle valve control mechanism at least when the throttle operator quickly moves to the first position so as to maintain the throttle valve between the idle and fully open positions.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,709,302. Although the conflicting claims are not identical, they are not patentably distinct from each other because in making the jet propelled watercraft of Patent 6,709,302, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to make the jet propelled watercraft of claim 1 of the instant application. Claim 1 of the patent includes every limitation of claim 1 of the instant application and adds **for a preset period of time** after *greater than a predetermined state*. Thus one having ordinary skill in the art is taught by claim 1 of the patent how to make the jet propelled watercraft of claim 1 of the instant application.

### **Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read 'Sherman D. Basinger', written in a cursive style.

Sherman D. Basinger  
Primary Examiner  
Art Unit 3617

sdb  
Wednesday, December 07, 2005